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BY HAND DELIVERY

Susan H. Kuhbach
Senior Office Director For Import Administration
U.S. Department of Commerce
Central Records Unit
Room 1870
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Re: Application Of The Countervailing Duty Law To Imports From The People's Republic Of China

Dear Ms. Kuhbach:

On behalf of US Magnesium LLC ("US Magnesium"), we respectfully submit this letter in response to the Department's invitation for comments on the applicability of the countervailing duty ("CVD") law to imports from the People's Republic of China ("China"). 71 Fed. Reg. 75,507 (Dec. 15, 2006). US Magnesium is the only remaining domestic producer of primary magnesium. Given the significant changes in the Chinese economy over the past twenty years, and the substantial increase in the capacity to produce magnesium in China during that time, US Magnesium is very concerned about the threat of injury caused by unfairly traded magnesium from China. Accordingly, US Magnesium believes that the CVD law applies to China and that the Department should carefully investigate the existence of countervailable subsidies alleged in lawfully filed petitions seeking relief from injurious imports from China.

US Magnesium understands that other parties, such as NewPage Corporation (“NewPage”) and the Committee to Support U.S. Trade Laws (“CSUSTL”), are submitting comments arguing that the U.S. Court Of Appeals for the Federal Circuit’s decision in *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) does not prohibit the Department from applying the CVD law in a case involving imports from China. US Magnesium agrees with and supports the arguments made by NewPage and CSUSTL. *Georgetown Steel* affirmed the Department’s discretion to determine whether or not to apply the CVD law to imports from an non-market economy country. Arguably, the Department is required by statute to do so. At a minimum, however, the Department is free to determine whether to do so in an individual case.

Leaving to others the discussion of *Georgetown Steel* and whether the Department is permitted to change its practice in light of factual and legal developments, US Magnesium’s comments focus on the threat to the U.S. magnesium industry posed by potentially subsidized imports from China.

The Chinese magnesium industry has developed very rapidly. In 1987, China had only one magnesium producer. In 2001, when the U.S. International Trade Commission (“Commission”) conducted its original investigation of pure magnesium in granular form from China, it found an estimated 84 producers of magnesium, dominated by nearly 60 export-oriented plants. Pure Magnesium From China and Israel, USITC Pub. 3467, at VII-1. Since then, the Chinese magnesium industry has continued to grow. China currently has the world’s

largest magnesium industry by far. It has vast unused capacity, and it is continually bringing new capacity on line. In 2000, China's capacity to produce magnesium was estimated to be 188,000 metric tons.¹ In its recent sunset review determination on pure magnesium in ingot form, the Commission noted that estimated 2005 production capacity in China had reached 527,600 metric tons.² The U.S. Geological Survey ("USGS") reported Chinese pure magnesium production of approximately 469,000 metric tons in 2005, an eight percent increase over 2004 levels.³ Although there have been some reports of smaller magnesium plants (those with capacity of less than 1,000 metric tons per year) closing, other plants have continued plans to increase capacity substantially.⁴ The plant expansions scheduled for 2005 and 2006 cited by USGS total 105,000 metric tons per year. Other sources have documented expansion plans of Chinese magnesium producers that will lead to even higher capacity in future years.⁵

¹ U.S. Geological Survey, 2000 Minerals Yearbook: Magnesium, ("2000 Minerals Yearbook") Table 7.

² USITC Pub. 3859 (July 2006), at IV-8. This estimated capacity may be understated. The Chinese Magnesium Association reported capacity of 480,000 to 500,000 metric tons and production of 268,000 metric tons in 2002, with capacity expected to increase to 700,000 metric tons in 2003. Magnesium from China and Russia, USITC Pub. 3763 (April 2005), at VII-1.

³ U.S. Geological Survey, 2005 Minerals Yearbook: Magnesium, at 46.3.

⁴ Id. According to this source, Weixin Magnesium Co. Ltd. in Inner Mongolia started construction of a 20,000 metric ton/year plant in March of 2005, with construction scheduled to be completed by the end of 2005. An additional five new magnesium plants were scheduled to come online in 2005. In all, USGS has documented plans to add 105,000 metric tons per year of capacity in 2005 and 2006.

⁵ See "New JV builds 50,000mt Mg plant," Platts Metals Week, (July 21, 2003), at 8; "China Steel to go ahead with Mg plant," Metal-Pages.com, (April 26, 2002); "Huayu to up Mg output to

Furthermore, China's magnesium industry is heavily export-oriented. While China produced 469,000 metric tons of magnesium in 2005, Chinese consumption was estimated at only 70,000-80,000 metric tons, with the remainder presumably destined for export markets.⁶ China's reported 2005 capacity of 527,000 metric tons in 2005 exceeds *world* consumption in 2002, as reported by the International Magnesium Association ("IMA").⁷ China's magnesium production capacity is clearly geared toward export markets, and the Chinese industry has significant unused capacity.

US Magnesium is very concerned that the massive expansion of the Chinese magnesium industry over recent years has been fueled by countervailable subsidies. In April 2006, the Government of China notified 78 subsidies to the World Trade Organization ("WTO") in accordance with the procedure required by China's Protocol of Accession to the WTO.⁸ These subsidies include various types of tax preferences, exemptions on duties payable on imported

30,000mt," Platts Metals Week, (March 24, 2003), at 7; "Henan Jiaozuo Mg Co. forges a production base," China Metal Market (June 5, 2003), at 10; "Ningxia United Magnesium looking to increase capacity," Metal-Pages.com (August 13, 2003); "More news on Yuxing Hongfu mag plant," Magnesium Monthly Review (June-July 2003), at 6; "Zhongning to triple Mg ingot capacity," Platts Metals Week, (May 19, 2003), at 9.

⁶ "China's primary magnesium output gains 8% year-on-year in 2005," magnesium.com, January 29, 2006.

⁷ The IMA reported 2002 consumption of magnesium at 364,959 metric tons. "International Magnesium Association (IMA) Report, Primary Magnesium Shipments in Metric Tons, 2002-Year End." 2002 is the last year for which IMA reported such statistics.

⁸ New And Full Notification Pursuant To Article XVI:1 Of The GATT 1992 And Article 25 Of The SCM Agreement; People's Republic Of China, G/SCM/N/123/CHN (April 13, 2006).

raw materials and equipment, and various other benefits. Eight of these subsidies were specifically listed in the CVD petition filed by NewPage Corporation on October 31, 2006, and the Department has included them in its investigation. Thus, the Chinese Government has admitted providing subsidies to its industries, and it is not unreasonable to suspect that significant subsidies have been provided to Chinese magnesium producers. For example, China offers an export tax rebate of five percent on exports of magnesium.⁹

US Magnesium believes that Chinese provincial and local governments are also providing significant subsidies to compete for investments and job creation in their regions. The Shanxi and Ningxia provinces accounted for 87.5 percent of China's production in 2005, with 76.6 percent coming from Shanxi province alone. The suspicion that central and provincial governments in China are subsidizing magnesium producers is strengthened by the recent additions of uneconomical magnesium production capacity that have contributed to global oversupply, depressing prices worldwide.

U.S. imports of magnesium from China in all forms are currently covered by three separate antidumping ("AD") orders. These orders have been very beneficial to date, effectively preventing dumped imports from China. The CVD law, however, is intended to remedy an unfair trade practice that is different than dumping, albeit just as pernicious. Even if one or more Chinese producers could establish that they are not dumping magnesium in the U.S. market, they

⁹ "China's primary magnesium output gains 8% year-on-year in 2005," magnesium.com, January 29, 2006.

still could be benefiting from countervailable government subsidies that enable them to sell at lower prices than they otherwise could and unfairly take market share from the domestic industry. AD and CVD remedies are not mutually exclusive for market economy countries, and there is no basis in the law for finding that they are mutually exclusive for China. Clarification of the Department's authority should help to deter the Chinese Government from subsidizing the magnesium industry in the future.

In conclusion, US Magnesium urges the Department to determine that it has the authority to apply the CVD law to imports from China. Please contact us if you have any questions about US Magnesium's position.

Respectfully submitted,

A handwritten signature in black ink, appearing to be a cursive combination of the names Joseph W. Dorn and Stephen A. Jones.

Joseph W. Dorn
Stephen A. Jones

Counsel to US Magnesium LLC